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LAW OFFICES  
GINSBURG, FELDMAN AND BRESS  
CHARTERED  
1250 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036  
TELEPHONE (202) 637-9000

TELEX 4938614 CORRESPONDENT OFFICE TELECOPIER  
9, RUE BOISSY D'ANGLAS (202) 637-9195  
75008 PARIS, FRANCE

October 30, 1996

J. THOMAS NOLAN  
ASSOCIATE

WRITER'S DIRECT DIAL NUMBER  
(202) 637-9133

VIA HAND DELIVERY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
U.S. DEPARTMENT OF COMMERCE

Ex Parte

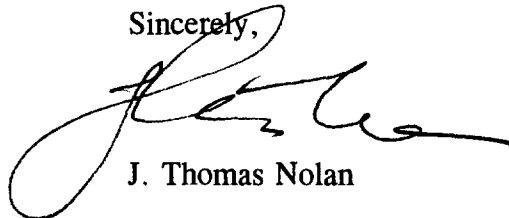
Re: Universal Service, Docket No. 96-45

Dear Mr. Caton:

A copy of the enclosed memorandum was sent today to Karen Brinkmann of the Wireless Telecommunications Branch.

Pursuant to Section 1.1206 of the Commission rules, two copies of the Memorandum are enclosed herewith for filing in the record of the above-referenced proceeding.

Sincerely,



J. Thomas Nolan

JTN:cn  
Enclosure

cc: Karen Brinkmann (w/encl.)

# **MEMORANDUM**

GINSBURG FELDMAN and BRESS

TO: Karen Brinkmann, Esq.

FROM: Henry M. Rivera  
J. Thomas Nolan *JTN*

DATE: October 30, 1996

RE: Regulatory Issues Regarding Universal Service Support for Schools and Libraries Under Section 254(h)(1)(B)

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## **I. QUESTION PRESENTED**

Under Section 254(h)(1)(B) of the Act, can a wireless service provider receive reimbursement using the universal service support mechanisms for Internet access service provided to school classrooms and libraries at a discount?

## **II. BRIEF ANSWER**

A telecommunications carrier is eligible under Section 254(h)(1)(B) for universal service support for any of its services which the Commission may designate, including Internet access service, provided at a discount to schools and libraries, and the scope of universal service includes services provided to school classrooms.

## **III. ANALYSIS**

- A. **Telecommunications carriers providing services to schools and libraries are eligible for universal service support whether or not they are "eligible telecommunications carriers" as that term is defined in the 1996 Act.**

The 1996 Act, in Section 254(e), broadly restricts which carriers may receive universal service support:

After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications

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carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.<sup>1/</sup>

However, despite the broad wording of this restriction, it does not apply to telecommunications carriers that provide service to requesting *schools and libraries* at a discount. Section 254(h)(1)(B) sets forth a separate framework for subsidized access to telecommunications services by elementary schools, secondary schools, and libraries. That section requires *all* telecommunications carriers to honor a bona fide request for service from a school or library within its service area, and to provide that service at a discount.<sup>2/</sup> The discount will either be treated as an offset to the carrier's contribution to universal service, or else the carrier may, "*notwithstanding the provisions of [Section 254(e)]*", receive reimbursement utilizing the universal support mechanisms to preserve and advance universal service."<sup>3/</sup>

This emphasized language is clearly intended to override Section 254(e)'s eligibility restriction and makes *any* carrier providing service under the terms of Section 254(h)(1)(B) eligible for universal service support.

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<sup>1/</sup> 47 U.S.C. § 254(e).

<sup>2/</sup> The service must be one that the carrier provides, and it must fall within the Section 254(c)(3) definition of universal service. 47 U.S.C. § 254(h)(1)(B). This provision is discussed more fully below.

<sup>3/</sup> 47 U.S.C. § 254(h)(1)(B)(ii) (emphasis added).

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**B.     Metricom is a telecommunications carrier, and its Ricochet service is a telecommunications service under the 1996 Act.**

Under the 1996 Act, a "telecommunications carrier" is defined as "any provider of telecommunication service."<sup>4/</sup> Metricom is a provider of telecommunications service, because the Act defines "telecommunications service" as the offering of telecommunications to the public for a fee, and defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."<sup>5/</sup> Metricom's Ricochet service is a telecommunications service because it is offered to the public for a fee and meets all three components of the definition of telecommunications. First, it permits the transmission of information of the user's choosing; second, it permits that information to be transmitted between points specified by the user; and finally, the information is transmitted without change in form or content.<sup>6/</sup>

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<sup>4/</sup> 47 U.S.C. § 153(44).

<sup>5/</sup> 47 U.S.C. § 153(44), (46).

<sup>6/</sup> It appears that Metricom's Ricochet service is a commercial mobile radio service (CMRS) as the FCC has defined that term. To be classified as a CMRS, a service must be (1) a mobile service provided for profit; (2) available to the public; and (3) interconnected with the Public Switched Network (PSN). 47 C.F.R. § 20.3(2) (1995); Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994) ("*Second CMRS Order*"). Not surprisingly, the FCC has ruled that unlicensed *transmitters* themselves do not constitute a CMRS. *Second CMRS Order*, 9 FCC Rcd at 1424 (¶7). The agency has not held that a *service* fails to qualify as a CMRS merely because it uses these unlicensed transmitters.

(continued...)

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- C. A telecommunications carrier may receive reimbursement for any services provided at a discount under Section 254(h)(1)(B), not just telecommunications services.**

Section 254(c)(3) permits the Commission to designate "additional services for [universal service] support mechanisms for schools, libraries, and health care providers for the purposes of [Section 254(h)]."<sup>7/</sup> Significantly, in making such designations, the Commission is not limited to telecommunications services. Therefore, the Commission may designate Internet access service for universal service support, even if it is not a telecommunications service. Because the Internet -- with its encyclopedias, library catalogs, and scientific research -- is the single most important educational advance that telecommunications can bring to the classroom, a good case can be made that the Commission *should* designate Internet access service for universal service support under Section 254(c)(3). If the Commission does so, then Metricom, as a telecommunications

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<sup>6/</sup>(...continued)

Ricochet service is a for-profit service available to the public and interconnected with the PSN. Ricochet modems will operate while in motion, and hence Ricochet service satisfies the literal definition of a mobile service; however, such a literal reading has been rendered unnecessary by recent FCC actions. The FCC has issued rules permitting certain wireless services to be classified as CMRS, even though the service is offered from fixed locations, and has initiated a further proceeding to permit a broader array of services offered via fixed radio transmitters to meet the definition of a mobile service within the scope of CMRS. Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *First Report and Order and Further Notice of Proposed Rule Making*, FCC 96-283 (rel. Aug. 1, 1996). Metricom will participate in this further proceeding asking that Ricochet be classified as a CMRS, and anticipates that the FCC will find that Ricochet is a CMRS.

<sup>7/</sup> 47 U.S.C. § 254(c)(3).

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carrier, is eligible for reimbursement for Internet access service provided at a discount to schools and libraries.<sup>8/</sup>

**D. The 1996 Act envisions service to classrooms, and carriers providing such service are eligible for universal service support.**

Section 254(h)(1)(B) is not, by its terms, limited to reimbursement of service provided outside or up to the school wall or any other demarcation point. That section speaks of "services [provided] to elementary schools, secondary schools, and libraries," and the reimbursement program created by that section must "ensure affordable access to *and use of* such services by such entities."<sup>9/</sup> Therefore, the Commission could reasonably conclude that affordable use of telecommunications services by schools entails the delivery of those services to classrooms within the schools. This conclusion is reinforced by Section 254(h)(2), which requires the Commission, through its rules, to "enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school *classrooms . . . .*"<sup>10/</sup>

Ricochet can provide technically feasible and economically reasonable Internet access service to classrooms through wireless modems. Its technical feasibility has been

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<sup>8/</sup> Section 254(h)(1)(B) states that a telecommunications carrier can be reimbursed for "any of its services that are within the definition of universal service under [Section 254(c)(3)]" so long as that service is provided to a school or library for educational purposes at a discount. 47 U.S.C. § 254(h)(1)(B). Here again the services so provided are not limited to telecommunications services.

<sup>9/</sup> 47 U.S.C. § 254(h)(1)(B) (emphasis added).

<sup>10/</sup> 47 U.S.C. § 254(h)(2) (emphasis added).

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demonstrated -- Metricom has deployed Ricochet in nearly 300 K-12 classrooms in the San Francisco Bay area. It is economically reasonable because Ricochet involves no retrofitting or inside wiring expenses, and is priced on very affordable terms.<sup>11/</sup> Telecommunications carriers providing technically feasible and affordable access via wireless services at a discount into classrooms, such as Metricom provides with Ricochet, are eligible for universal service support.

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<sup>11/</sup> Under its educational discount program, Metricom offers an e-mail account and unlimited Internet access to a classroom for \$19.95 per month. The wireless modem can be purchased for \$199 or rented for \$10 per month. A one-time activation fee is waived when 10 or more units are purchased.